



C CONTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-160929

April 20, 1967

Dear Mr. Moss:

Further reference is made to your letter of February 21, 1967, transmitting correspondence from the attorney for the Redevelopment Agency of the City of Sacramento, California, concerning its complaint against the action of the General Services Administration (GSA) in proposing the purchase price of a Federal office building and courthouse located in a redevelopment project area in Sacramento.

Plans for constructing the building proposed by the Administrator of GSA under authority of the Public Buildings Purchase Contract Act of 1954, as amended, 40 U.S.C. 356, were approved by resolutions of the House and Senate Committees on Public Works on June 13 and 22, 1956, respectively, as required by said act. This act provided authority for GSA to obtain and provide space for the activities of the Government under lease-purchase contracts of not less than ten nor more than twenty-five years. The act also provided that title to the property could not be acquired by the Government prior to the expiration of the contract term specified, in the absence of specific appropriation of funds by Congress for such purpose, and that any interest in real property acquired under its terms would be subject to state and local taxes until such time as title vested in the United States.

In 1956, based on the assumption that any lease-purchase contract executed by the Government would be for 25 years, and the further assumption that title could not be acquired before expiration of this period, during which time the estimated yearly tax liability would be approximately \$122,000, the Redevelopment Agency sold \$2,000,000 of tax allocation bonds. These assumptions, and representations to potential investors, were based on the following letter of March 22, 1956, from the Deputy Regional Director of GSA to the Redevelopment Agency:

"Your letter of March 16 asked about the method of financing which would be used if the proposed new Federal Building is built on the Capitol Mall in Sacramento. We have recommended construction of a new building on the Mall under the Lease Purchase Act, Public Law 519, 83rd Congress, copy attached. As a matter of fact, there is no other current construction program under which the building could be built.

"The Act requires that the terms of the purchase contract shall not be less than ten, nor more than twenty-five years, and that title to the property shall vest in the United States at or before the expiration of the contract term. It is definitely expected that the contract term on a large project such as this would be for the full twenty-five year period. The Act also provides that title to the property cannot be acquired prior to the expiration of the contract term specified, in the absence of specific appropriation of funds by Congress for such acquisition.

"Payment of taxes during the term of the contract is provided by the following paragraph quoted from the Act: 'with respect to any interest in real property acquired under the provisions of this section, the same shall be subject to State and local taxes until title to the same shall pass to the Government of the United States.'" (Underscoring supplied.)

Before contracts for constructing and financing the building were let, the Independent Offices Appropriation Act, 1959, 72 Stat. 1063, was enacted on August 28, 1958. As originally proposed, this act would have prohibited the use of any funds for lease-purchase contracts, except for seven projects. As finally passed, it excluded 29 projects, including Sacramento, from its prohibition and further provided authority for the Administrator of GSA to enter into a 10-year contract for the project at Sacramento. Senator Dirksen introduced the amendment respecting Sacramento and his remarks as reported in the Congressional Record, June 9, 1958, pages 9430-31, indicate a clear intention to allow Sacramento 10 years in which to collect taxes on the Federal building to help retire the bonds which were sold on the assumption there would be a long term lease.

The contracts for construction and financing of the building were executed on June 30, 1959. The contract to finance was with Bankers Life Company for a term of 10 years, with the following proviso:

"Article 6. Subject to specific appropriation, the Government shall have the right to prepay, at any time during the last half of the term of this Title III, the entire remaining unpaid balance of the Purchase Price upon six months prior written notice to the Investor of intention to do so. * * *."

By letter dated January 25, 1966, GSA notified Bankers Life of its intention to exercise its right, under the contract, to prepay the entire remaining unpaid balance.

On September 6, 1966, the Independent Offices Appropriation Act, 1967, 80 Stat. 663, was approved and included an item of \$6,746,000, "For payments of principal, interest, taxes, and any other obligations under contracts entered into pursuant to the Public Buildings Purchase Contract Act of 1954." The following comment on this legislation by the Committee on Appropriations appears at page 11, House Report No. 1477, 89th Congress, 2nd Session:

"The bill contains \$6,746,000, the full budget estimate, for prepayment of the Sacramento, California, purchase contract and installment payments and taxes on the remaining five lease-purchase contracts authorized under the Public Buildings Purchase Contract Act of 1954. Under the terms of the contracts on the remaining projects GSA cannot exercise its purchase options until 1973. However, the Committee urges that GSA enter into purchase negotiations whenever the opportunity arises." (Underscoring supplied.)

Pursuant to the authority of this act, the balance due under the contract to finance was paid and a deed of conveyance to the building was delivered to the Government on September 20, 1966. The Chairman, Subcommittee on Independent Offices Appropriations, Committee on Appropriations, United States Senate and House of Representatives, respectively, were notified of such action on October 22, 1966. Approximately \$120,000 had been paid to the County of Sacramento for taxes assessed beyond the closing date and a refund of such amount was requested by letter dated October 24, 1966. This request is apparently under consideration at this time.

The Redevelopment Agency of the City of Sacramento, through its attorney, contends that GSA has acted in an arbitrary, capricious, and unreasonable manner; that there was no authority for including the prepayment clause in the contract; that neither the Redevelopment Agency nor the Department of Housing and Urban Development were notified of the action being taken to prepay; and that had Congress been aware of the history concerning financing of the Sacramento project it would not have appropriated the money to prepay the contract to finance.

The GSA letter of 1956, quoted above, correctly stated the law as it existed at that time and was not, in our opinion, misleading or

prejudicial to the Redevelopment Agency or the City of Sacramento. Any hardship which has befallen the Agency and City resulted not from any illegal or capricious action on the part of GSA, but rather from a change in Governmental policy with respect to the public buildings program, as first expressed in the Independent Offices Appropriation Act of 1959. It is clear from Senator Dirksen's remarks concerning this legislation that there was Congressional concern over transition from one policy to another and the problems that might be engendered thereby. Because of the unique situation with respect to Sacramento as outlined in the Congressional Record cited above, it was excepted from the proposed legislation and GSA was given authority to proceed with a 10-year lease-purchase agreement. The contract to finance was for a 10-year term as authorized, reserving, however, the right to prepay if Congress should see fit to appropriate funds for such purpose. We do not view the inclusion of this provision as an unauthorized act. Moreover, it is reported that GSA has included such a provision in other lease-purchase agreements to phase out this program as Congress deems it appropriate. Since the Independent Offices Appropriation Act, 1967, supra, specifically provided money to prepay the subject contract we must presume that Congress deemed it appropriate to do so at this time. In these circumstances, we see no basis upon which our Office may properly object to GSA's action in this case.

Whether the circumstances of this case are such as to justify a private bill for relief is, of course, a matter of Congressional policy on which we express no opinion. If we may be of further service in this matter, please advise us.

Sincerely yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

The Honorable John E. Moss
House of Representatives

